

**BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION**

Loetta TenHulzen,  
Appellant,

v.

Lancaster County Board of Equalization,  
Appellee.

Case No: 17R 0157

Decision and Order Affirming  
the Lancaster County Board of Equalization

Background

1. The Subject Property is a residential parcel consisting of a garage, with a legal description of: East Lawn Addition to Hickman, Block 5, Lot 1-3
2. The Lancaster County Assessor (the County Assessor) assessed the Subject Property at \$59,000 for tax year 2017.
3. The Taxpayer protested this value to the Lancaster County Board of Equalization (the County Board) for tax year 2017.
4. The County Board determined that the taxable value of the Subject Property was \$59,000 for tax year 2017.
5. The Taxpayer appealed the determination of the County Board to the Tax Equalization and Review Commission (the Commission).
6. A Single Commissioner hearing was held on February 2, 2018, at the Commission Hearing Room, Sixth Floor, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska, before Commissioner James D. Kuhn.
7. Loetta TenHulzen was present at the hearing (Taxpayer).
8. Lyman Taylor was present on behalf of the Lancaster County Assessor (the County Assessor).

Applicable Law

9. All real property in Nebraska subject to taxation shall be assessed as of the effective date of January 1.<sup>1</sup>
10. The Commission's review of the determination of the County Board of Equalization is de novo.<sup>2</sup>
11. When considering an appeal a presumption exists that the "board of equalization has faithfully performed its official duties in making an assessment and has acted upon

<sup>1</sup> See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009).

<sup>2</sup> See, Neb. Rev. Stat. §77-5016(8) (2016 Cum. Supp.), *Brenner v. Banner Cty. Bd. of Equal.*, 276 Neb. 275, 286, 753 N.W.2d 802, 813 (2008). "When an appeal is conducted as a 'trial de novo,' as opposed to a 'trial de novo on the record,' it means literally a new hearing and not merely new findings of fact based upon a previous record. A trial de novo is conducted as though the earlier trial had not been held in the first place, and evidence is taken anew as such evidence is available at the time of the trial on appeal." *Koch v. Cedar Cty. Freeholder Bd.*, 276 Neb. 1009, 1019 (2009).

sufficient competent evidence to justify its action.”<sup>3</sup> That presumption “remains until there is competent evidence to the contrary presented, and the presumption disappears when there is competent evidence adduced on appeal to the contrary. From that point forward, the reasonableness of the valuation fixed by the board of equalization becomes one of fact based upon all the evidence presented. The burden of showing such valuation to be unreasonable rests upon the taxpayer on appeal from the action of the board.”<sup>4</sup>

12. The order, decision, determination or action appealed from shall be affirmed unless evidence is adduced establishing that the order, decision, determination, or action was unreasonable or arbitrary.<sup>5</sup>
13. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.<sup>6</sup>
14. A Taxpayer must introduce competent evidence of actual value of the Subject Property in order to successfully claim that the Subject Property is overvalued.<sup>7</sup>
15. The Commission’s Decision and Order shall include findings of fact and conclusions of law.<sup>8</sup>

#### Findings of Fact & Conclusions of Law

16. The Taxpayer claimed that the value of her property was too high based on the fact that the lots were partially in a floodplain and it would take a large amount of fill dirt to make the lots buildable.
17. In support of this claim, the Taxpayer provided a floodplain map showing that some of the parcel was in a mapped 100 year floodplain.
18. The Taxpayer also claimed the value of the property significantly increased from 2016 to 2017 and was one of her reasons for appealing. The County Assessor stated that the increase was due to the revaluation that is done every 3 years in Lancaster County.
19. The Taxpayer stated that a realtor told her the property would sell for \$44,000.
20. The Taxpayer provided a letter from Ron Stelling of Woods Bros Realty with the \$44,000 estimated sale price.
21. The Taxpayer said no basement could be built on the lots due to the floodplain issue.
22. The County Assessor stated that the floodplain portions of the property were being valued at a 30% reduced rate compared to lots that were not in the floodplain. All lots that are in the floodplain are being valued at the same rate in Hickman Nebraska.

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<sup>3</sup> *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

<sup>4</sup> *Id.*

<sup>5</sup> Neb. Rev. Stat. §77-5016(9) (2016 Cum. Supp.).

<sup>6</sup> *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

<sup>7</sup> Cf. *Josten-Wilbert Vault Co. v. Board of Equalization for Buffalo County*, 179 Neb. 415, 138 N.W.2d 641 (1965)

(determination of actual value); *Lincoln Tel. and Tel. Co. v. County Bd. Of Equalization of York County*, 209 Neb. 465, 308 N.W.2d 515 (1981)(determination of equalized taxable value).

<sup>8</sup> Neb. Rev. Stat. §77-5018(1) (2016 Cum. Supp.).

23. The County Assessor stated that there is a possibility to build on the vacant portion of the property without being in the floodplain. A map provided by the Taxpayer showed this as being a possibility.
24. The County Assessor stated that vacant lot values continue to rise in Hickman and a revaluation will need to be done next year instead of waiting for the normal 3 year cycle of revaluations.
25. The Taxpayer has not produced competent evidence that the County Board failed to faithfully perform its duties and to act on sufficient competent evidence to justify its actions.
26. The Taxpayer has not adduced clear and convincing evidence that the determination of the County Board is arbitrary or unreasonable and the decision of the County Board should be affirmed.

## ORDER

### IT IS ORDERED THAT:

1. The Decision of the County Board of Equalization determining the taxable value of the Subject Property for tax year 2017, is Affirmed.
2. The taxable value of the Subject Property for tax year 2017 is \$59,000
3. This Decision and Order, if no further action is taken, shall be certified to the Lancaster County Treasurer and the Lancaster County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (2016 Cum. Supp.).
4. Any request for relief, by any party, which is not specifically provided for by this Decision and Order is denied.
5. Each Party is to bear its own costs in this proceeding.
6. This Decision and Order shall only be applicable to tax year 2017.
7. This Decision and Order is effective on February 5, 2018.

Signed and Sealed: February 5, 2018

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James D. Kuhn, Commissioner